

MUTUAL AGREEMENT TO ARBITRATE

1. **Effective Date and Acceptance Date.**

The effective date of this Mutual Agreement to Arbitrate Claims ("Agreement") is September 24, 2014. Landry's, Inc. ("Company") and Employee mutually agree to resolve Covered Claims which occur on or after the effective date according to the terms and conditions of this Agreement.

2. **Acts of Acceptance.**

Any one of the following actions shall constitute acceptance of the terms and conditions of this Agreement:

a. If Employee receives notice of this Agreement prior to commencing work at Company, Employee's commencement of work at Company shall constitute acceptance; or

b. If Employee receives notice of this Agreement after commencing work at Company, Employee's continuation of employment at Company constitutes acceptance if Employee continues to work for three (3) days after receipt of the notice; or

c. If Employee incurs an injury within the Course and Scope of Employment and has not previously accepted under subsection (a) or (b) above, notice of this Agreement may be provided to Claimant. If such notice is provided, Employee's subsequent receipt of any benefit payable under the Company's Employee Injury Benefit Plan shall constitute acceptance.

d. For an Employee who hauls goods, merchandise, and equipment interstate, in addition to coverage under this Agreement by virtue of continued employment after receiving notice of this Agreement, of Employee's receipt of benefits under Company's Occupational Injury Plan forms the consideration for enforcement of this Agreement as to Employee.

3. **Definitions.**

a. "Company" includes Landry's Inc., Aqua Waterfront, LLC, Post Oak Motors, LLC, Landry's Acquisition Co., Fertitta Entertainment, Inc., and Fertitta Hospitality, LLC, all officers, directors, agents, franchisors, franchisees, successors, representatives,

predecessors, affiliated or related entities or companies of Company.

b. "Claimant" and "Employee" mean a person who is employed by Company and has a Covered Claim. The term also includes an Employee's spouse, children, parents, estate, successors and assigns.

c. "Course and Scope of Employment" means an activity of any kind or character that has to do with or originates in the work, business, trade, or profession of Company and that is performed by Employee while engaged in or about the furtherance of the affairs or business of Company. The term includes an activity conducted on the premises of Company or at other locations.

d. "Covered Claim" or "Covered Claims" means any and all claims included or described in Paragraph 6(a) of this Agreement.

4. **Federal Arbitration Act Applies.**

Company is engaged in "commerce" as that term is defined in Section 1 of the Federal Arbitration Act ("FAA"). The FAA governs all aspects of this Agreement, including conduct of the arbitration and all procedures following an arbitrator's award.

5. **Arbitration is Mandatory for Covered Claims.**

Covered Claims shall be exclusively resolved by binding arbitration. While both Employee and Company retain all substantive legal rights and remedies under this Agreement, Employee and Company are both waiving all rights which either may have with regard to trial, whether jury or non-jury, in state or federal court for any Covered Claim.

6. **Scope of Arbitration Agreement.**

a. **Claims Covered by This Agreement.**

(i) This Agreement is mutual, covering all claims that Company or Employee may have which arise from: Any injury suffered by Employee while in the Course and Scope of Employee's employment with

Company, including but not limited to, claims for negligence, gross negligence, and all claims for personal injuries, physical impairment, disfigurement, pain and suffering, mental anguish, wrongful death, survival actions, loss of consortium and/or services, medical and hospital expenses, expenses of transportation for medical treatment, expenses of drugs and medical appliances, emotional distress, exemplary or punitive damages and any other loss, detriment or claim of whatever kind and character

(ii) This Agreement covers all Claims and causes of action arising under the federal and state employment laws. This includes, but is not limited to, claims under Title VII of the Civil Rights Act, the Fair Labor Standards Act, the Texas Commission on Human Rights Act, the Americans with Disability Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, as well as all common law claims, including those for retaliation, tortious interference and wrongful discharge.

(iii) Employee is also obligated to arbitrate any action against a current or former supervisor or other agent of Company in his or her individual capacity based upon any claim arising out of Employee's employment or termination of employment.

b. Claims Not Covered by This Agreement.

This agreement does not apply to:

(i) Claims for benefits under the Company's Employee Injury Benefit Plan;

(ii) Workers' Compensation Benefits under the Texas Workers' Compensation Act or any other similar state or federal law;

(iii) Claims based upon Company's pension or benefit plan that contains an arbitration or other non-judicial resolution procedure, in which case the provisions of that plan shall apply;

(iv) Claims covered by a collective bargaining agreement, in which case the terms, conditions and procedures of that collective bargaining agreement shall control.

(v) Claims for Unemployment Compensation Benefits.

(vi) Claims under the National Labor Relations Act.

Nothing in this Agreement precludes the parties from agreeing to resolve claims that are otherwise not

covered by this Agreement the same as if they were Covered Claims.

c. **Arbitrability of Particular Disputes.** Any question as to the arbitrability of any particular claim shall be arbitrated pursuant to the procedures set forth in this Agreement.

d. **Class Action Waiver.** By this Agreement, Employee waives the right to pursue any claim covered by this Agreement through a joint, collective or class action process in any forum, whether arbitral or judicial. As such, Employee can pursue any Claim only in his/ her capacity and behalf and not on behalf of other Company employees.

7. Procedure.

a. **Who Shall Arbitrate?** All arbitrations under this Agreement shall be administered by the American Arbitration Association ("AAA") under its rules for the resolution of disputes. In the event that AAA is unable or unwilling to administer the arbitration, Judicial Arbitration and Mediation Services ("JAMS") shall administer the arbitration under its rules for the resolution of disputes. Or, the parties may utilize any other arbitrator that is mutually agreeable to Employee and Company. For any arbitration under this Agreement, a single arbitrator shall be appointed. Company and Employee are to participate in the selection of a neutral arbitrator as follows: The parties shall be presented a panel with a minimum of three different arbitrators. Company and Employee may agree to the selection of one arbitrator from the panel. If agreement is not reached, Company and Employee shall have an equal number of strikes. The parties shall continue to strike arbitrators from the panel until one arbitrator remains. That person shall then arbitrate the claim. Any arbitrator must be neutral as to all parties. Standards for the recusal of an arbitrator shall be the same standards under which trial judges are recused under Texas law.

b. **Where Shall the Arbitration Take Place?** The arbitration shall take place within 25 miles of the location where Employee worked for Company at the time of the injury.

c. **Payment of Fees and Expenses.** Company shall be responsible for the fees of the arbitrator and the cost

of a stenographic record of the arbitration hearing. Employee must pay the initial filing fee for the Arbitration.

d. **Discovery and Pre-Arbitration Motions.** All parties are entitled to pre-arbitration discovery under the Texas Rules of Civil Procedure. The same discovery devices and scope of discovery as set forth in those rules shall apply. All parties are entitled to file any motions, including dispositive motions, set forth in the Texas Rules of Civil Procedure.

e. **Remedies and Defenses.** All parties are entitled to allege any claim, obtain any remedy and assert any legal or equitable defense that the party could allege, obtain or assert in a Texas state or federal court. With respect to any claim which allows for an award of attorneys fees, the arbitrator must award attorney fees, if any, that bear a reasonable relationship to (1) the amount of the damages award and (2) the time, effort, and efficiency expended by the attorney in securing the damage award.

f. **Record.** A stenographic record can be taken of the arbitration hearing.

g. **Written Award.** Within a reasonable time after the conclusion of the arbitration hearing, the arbitrator shall issue an award and send a copy to all parties. Either party can appeal the award under the standards provided in the Federal Arbitration Act.

h. **Judgment.** Any party to an arbitration award may file the award in an appropriate Texas state court and move that a judgment be entered on the arbitration award.

i. **Confidentiality.** The parties agree that any settlement or arbitration of a Covered Claim shall be kept confidential except:

(i) Communications made, pleadings filed and materials submitted in connection with the entry or appeal of an award of the arbitrator;

(ii) Communications or reporting to the Internal Revenue Service;

(iii) If Employee or Company is compelled to testify by subpoena.

8. **Consideration.**

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In addition to any other consideration that may exist for the agreement to arbitrate, Company's and Employee's mutual promise to resolve claims and controversies by arbitration in accordance with the provisions of this Agreement constitutes consideration for this Agreement. Employee's continued employment with Company after receiving notice of the institution of the Agreement also constitutes consideration for this Agreement. Finally, this Agreement is presented in connection with Company's Employee Injury Benefit Plan. Payments made under that Plan also constitute consideration for this Agreement.

9. **Enforceability.**

If any provision of this Arbitration Program is adjudged to be invalid, illegal or unenforceable, in whole or in part, the balance of this Agreement shall remain in effect.

10. **Not an Employment Agreement.**

This Agreement is not, and shall not be construed to create, any contract of employment, express or implied, nor shall the Agreement be construed in any way to change the employment status of any Employee of Company from at-will status.

11. **Termination and Modification of Agreement.**

Company shall have the right to prospectively terminate and modify this Agreement. Termination or modification is not effective for Covered Claims which accrued or occurred prior to the date of the termination. Termination and modification are also not effective until ten (10) days after reasonable notice is given to Claimant.

12. **Term.**

This Agreement commences on the Acceptance Date and applies to all Covered Claims which occurred on or after the effective date.

This Agreement shall survive the employer-employee relationship between the Company and the Employee and shall apply to any Covered Claim whether it arises or is asserted during or after termination of the Employee's

employment with the Company or the expiration of any benefit plan.

13. Sole and Entire Agreement.

This Program Agreement constitutes the parties' complete agreement and supersedes any prior agreement regarding arbitration of Covered Claims which occur during the Term of this Agreement.

14. Applicability of This Agreement to Others.

Employee and Company intend and expressly agree that any Covered Claim of Employee's spouse, children, parents, estate, successors and/or assigns that now exists or that may come into existence in the future which arises from, relates to, or is derivative of any Covered Claim, shall be resolved according to the terms and conditions of this Agreement.

Employee and Company intend and expressly agree that any Covered Claim of Company's officers, directors, agents, predecessors, successors, and affiliated companies that arises from, relates to, or is derivative of any Covered Claim of Company, shall be resolved according to the terms and conditions of this Agreement.

15. Spanish Language Version.

This Agreement has been translated into Spanish. In the event of any discrepancy or conflict between the English and Spanish versions of this Agreement, the terms of the English language version shall control